IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 223 OF 2007

ARUN TARA PRASAD MISHRA .. PETITIONER

Versus

SHRI SURENDRA DUBEY & ORS. .. RESPONDENTS

Mr. Subhash Jha i/b Ghanshyam Upadhyay for the petitioner
Mr. V. V. Khanolkar for R-1
Mrs. A.S. Pai, APP

CORAM:-SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.

DATED:-12/2/2007

P.C.

. Rule. Respondents waive service. By consent of the parties taken up for hearing forthwith.

2. The petitioner has approached this court by invoking the jurisdiction of this court under Article 226 of the Constitution of India. His case is that he has married the daughter of respondent 1, one Hetal Surendra Dubey. According to the petitioner Hetal is a major. He has married her on 15/11/06 when she was a major. The petitioner contends that a false and frivolous case is filed

by the 1st respondent against the petitioner. Pursuant to the same, the police came to his native place on 16/12/06 at Varanasi U.P. and arrested him. The petitioner was later on released on bail.

3. The case of the petitioner further is that the police forcibly brought his wife Hetal to Mumbai. According to the petitioner, Hetal is wrongfully detained by the 1st respondent. The petitioner has prayed that his wife Hetal be produced in the court and direction be given to the respondents to release Hetal from illegal detention. It is further prayed that records and proceedings of C.R. No. 441 of 2006 be called for and F.I.R. lodged by the 1st respondent be quashed. A claim for compensation of Rs.10 lakhs is also made for having allegedly illegally arrested and detained the petitioner;

4. We have heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. We have interviewed Hetal, wife of the petitioner in our chamber. We have also interviewed the 1st respondent and his wife in our

chamber. We have also interviewed the petitioner in our chamber.

6. To a specific question asked by us as to whether she wants to stay with her husband or whether she wants to stay with her parents, Hetal categorically told us that she has left her parent's house of her own volition and she wants to go to her husband. She submitted that she is not forced into making this statement. Even in the court in the presence of her father and mother Hetal reiterated the same statement.

7. We have heard Mr. Jha, learned counsel for the petitioner. He has placed reliance on three judgments of the Supreme Court. They are **Sangita Rani (Smt.) alias Mehnaz Jahan v. State of Uttar Pradesh & Anr., 1992 Supp (1) SCC 715,** Fazle **Gaffar Khan & Ors. v. State of W.B. & Anr., (2000)** 10 SCC 10 and **Lata Singh v. State of U.P. & Anr., (2006) 5 SCC 475**. He submitted that in the light of the above judgments, this court should permit Hetal to go with her husband, the petitioner, if she so desires. Mr. Jha further submitted that the case filed by the 1st respondent is false and hence it may be quashed. For the prayer of

quashing of the proceedings also Mr. Jha placed reliance on the judgments which, we have quoted above.

8. The learned counsel for the 1st respondent on the other hand submitted that the 1st respondent is very much concerned about the safety of Hetal. He fears that she will not be properly looked after. He submitted that 1st respondent and members of his family have been given threats and in the circumstances interest of justice will be served if Hetal is permitted to stay with her parents and the case is expedited.

9. We have given anxious consideration to the submissions advanced by both sides. Considering the fact that Hetal is a major and considering the fact that she has categorically stated that she wants to stay with her husband, and that she is making this statement of her own free will and the fact that Hetal is legally married to the petitioner, and that when she got married to the petitioner, she was major, we see no reason why Hetal should not be allowed to go with the petitioner, if she so desires.

10. However, we are not inclined to quash the pending proceedings. Mr. Jha did not dispute the fact that when Hetal left the house of her parents, she was a minor. Besides chargesheet is already filed. In such circumstances, prayer for quashing of the proceedings is rejected. It will be, however, open to the petitioner to approach the trial court, for any relief, which he may be entitled to in accordance with law. Needless to say that the court seized of that matter shall deal with it in accordance with law, uninfluenced by any observations made by us. Similarly in view of the pendency of the criminal case the claim for compensation can also not be entertained.

11. The petitioner’s wife Hetal can go with the petitioner, if she so desires. She shall not be prevented by anybody.

12. Both sides have made allegations and counter allegations about threats having been given by the other side. If threats are given as alleged, we expect the police to look into that aspect of the matter, if any complaint in that behalf is made to the police.

13. Petition is disposed of in the aforestated terms.

JUDGE.

JUDGE.